UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/535,888	03/27/2000	George McBride	CARDIOBEAT-3	3981

7590 09/20/2004	EXAMINER
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ART UNIT	PAPER NUMBER
2155	

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DATE MAILED: 09/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
Office Action Summary	09/535,888	MCBRIDE ET AL.
	Examiner	Art Unit	
	Shabana Qureshi	2155	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _17 May 2004_.
2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.
3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _1-12_ is/are pending in the application.
    4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5)☐ Claim(s) _____ is/are allowed.
6)☒ Claim(s) _1-12_ is/are rejected.
7)☐ Claim(s) _____ is/are objected to.
8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.
10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    a)☐ All   b)☐ Some * c)☐ None of:
      1.☐ Certified copies of the priority documents have been received.
      2.☐ Certified copies of the priority documents have been received in Application No. _____.
      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Examiner has received the 1.31 Affidavit submitted by the Applicant on May 17, 2004

and has modified her rejection accordingly.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent

Application 6,162,180 issued to Keith Meisel et al (hereinafter Meisel et al) in view of U.S.

Provisional Application 60,107,707 by Christopher Maus et al (hereinafter Maus et al).

In regard to claim 1, Meisel et al teach a method of operating an Internet device, comprising:

- a medical testing program being utilized to provide non-invasive cardiovascular function

  (column 1, lines 58-60) related test measurement data connected to a server (column 1,

  lines 58-60; column 2, lines 3-17);

- coupling at least one non-invasive sensor to the Internet device, the at least one sensor

  being non-invasively coupled to and disposed on a patient to obtain impedance test

  measurement data (column 1, lines 58-60; column 2, lines 3-17);

- executing the test program to obtain the test measurement data from the at least one

  sensor (column 9, lines 15-32);

- automatically uploading the test measurement data to the server via the Internet (column 2, lines 3-17);

- automatically analyzing the test measurement data at the server to provide cardiac function test data (column 5, lines 18-67);

- storing the test measurement data and the cardiac function test data for the patient in a database accessible by the server (column 6, lines 31-36);

- operating on the test measurement data to produce substantially real time waveforms of the cardiac function test data (column 2, lines 29-43); and;

- displaying the processed cardiac function test data (column 9, lines 15-32).

- maintaining a history of test measurement data and cardiac function test data for the patient (column 9, lines 25-28); and

- receiving processed cardiac function test data from the server as a download from the server via the Internet (column 9, lines 25-28).

Meisel et al do not explicitly teach the downloading of a medical testing program via the Internet from a server. However, Meisel teaches that a computer program is used in the medical testing system and in one embodiment the medical instrument used may be one in which a patient's finger may be secured and coupled to a processor and a communication link between a processor unit and a remote host processor (Meisel et al, column 9, lines 7-15). Maus et al teach such a system where a medical instrument measuring test data through an instrument secured on a patient's finger that is coupled to a processor and a communication link between a processor unit and a remote host processor. Maus et al also teach the downloading of a medical testing program via the Internet from a server (Maus et al, page 6, lines 10-21). It would have been

obvious to one of ordinary skill in the art at the time the invention was made to modify the system taught by Meisel et al by employing the feature of enabling the medical testing program to be downloaded through a server so that patients may upload the program from remotely from their personal computers at home.

Meisel et al further do not explicitly teach utilizing a trending algorithm on the history to develop a medical condition trend for the patient as claimed. However, Maus et al discloses claimed utilizing a trending algorithm on the history to develop a medical condition trend for the patient (page 5, line 27 – page 6, line 6). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Albert et al by employing the trending algorithm of Maus et al, because the combination would allow patients to monitor their cardiac health and encourage them to improve their cardiac health, reduce medical costs, and health insurance rates (Maus et al, page 4, lines 5-15).

As per claims 2 and 3, Meisel et al in view of Maus et al teach a method in accordance with claim 1. However, Meisel et al do not explicitly teach the execution of an instructional guide that maybe downloaded from the server via the Internet. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include and instructional guide in the device taught by Meisel et al because any health device, in order to measure health data accurately, must be used correctly by the patient. As there is no supervision of a medical professional, the medical device must provide a thorough instructional guide. Maus et al further teaches this on page 15, lines 4-12.

As per claim 4, Maus et al in view of Maus et al teach a method in accordance with claim 1. Maus et al further teaches the method comprising:

-   executing a data verification program on the Internet device prior to uploading the test
    measurement data to verify operation of the at least one sensor (page 6, line 27 page 7,
    line 5).

As per claim 5, Maus et al in view of Maus et al teach a method in accordance with claim
4. Maus et al further teach the method comprising:

-   downloading the verification program from the server via the Internet (page 6, line 27 -
    page 7, line 5).

As per claim 6, Meisel al in view of Maus et al teach a method in accordance with claim
1. However, Meisel et al nor Maus et al teach that the internet device comprises:

-   un-installing the medical testing program from the Internet device upon completion of a
    testing sequence.

However, it would have been obvious to one of ordinary skill in the art at the time the
invention was made that software programs may include an un-install functionality so that the
program may be removed from the Internet device when it is no longer needed. Therefore, it
would have been obvious to one of ordinary skill in the art to combine this functionality to the
software program of Meisel et al in view of Maus et al.

As per claim 7, Meisel et al in view of Maus et al teach a method in accordance with
claim 1. Maus et al further teach the method comprising:

-   utilizing an encryption program to encrypt the test measurement data (page 16, lines 24-
    30; page 17, lines 17-28).

As per claim 8, Meisel et al in view of Maus et al teach a method in accordance with
claim 1. Maus et al further teach the method comprising:

- temporarily storing the encryption program in a memory of the Internet device (page 16, lines 24-30; page 17, lines 17-28).

As per claim 9, Maus et al further teach the method comprising:

- storing a testing measurement portion of the medical testing program for execution by the Internet device (page 6, lines 10-21);

- storing a test diagnostic portion of the medical testing program in the memory for execution (page 3, lines 23-25);

- storing a verification portion of the medical testing program in the memory for execution (page 6, line 22 – page 7, line 13); and

- storing an encryption portion of the medical testing program in the memory for execution (page 16, lines 24-30; page 17, lines 17-28).

Meisel et al nor Maus et al specify that there is an uninstall feature comprised in the Internet device. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made that software programs may include an un-install functionality so that the program may be removed from the Internet device when it is no longer needed. Therefore, it would have been obvious to one of ordinary skill in the art to combine this functionality to the software program of Meisel et al in view of Maus et al.

As per claim 10, Maus et al further teach the method comprising:

- downloading an impedance cardiography program as a part of the medical testing program (page 6, lines 10-21).

As per claim 11, Meisel et al further teach the method comprising:

- coupling a plurality of non-invasive sensors including the at least one non-invasive sensor

   to the Internet device, the plurality of non-invasive sensors being non-invasively coupled

   to and disposed on the patient (column 1, lines 58-67).

As per claim 12, Meisel et al further teach the method comprising:

- utilizing the plurality of non-invasive sensors to obtain the impedance test measurement

   data (column 4, lines 54-67).

Conclusion

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Shabana Qureshi whose telephone number is (703) 308-6118.

The examiner can normally be reached on Monday - Friday, 8:30am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Hosain T. Alam can be reached on (703) 308-6662. The fax phone number for the

organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Shabana Qureshi
Examiner
Art Unit 2155

September 16, 2004

HOSAIN ALAM
SUPERVISORY PATENT EXAMINER